

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service in Illinois. See 86 Ill. Adm. Code 140.101. (This is a PLR).

July 13, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of May 6, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

In your letter dated March 23, 1999, you requested additional information regarding the issues being addressed in our letter ruling request. Listed below is additional information necessary in order to follow the general procedures of the Illinois Department of Revenue ('Department').

- (1) To the best of our knowledge, COMPANY is not currently under audit for the issues being addressed. The issues being addressed in the letter ruling request have not been previously been considered by the Department;
- (2) The tax period at issue is January 1, 1996 through the present time; and
- (3) To the best of our knowledge, the Department has not previously ruled on the same or similar issue for COMPANY;

We respectfully request, a binding Private Letter Ruling from the Department of Revenue based on the facts, issues and discussions previously submitted in a letter ruling dated February 8, 1999. Enclosed is a copy of the initial letter ruling, the General Information Letter, and a copy of the power of attorney designating BUSINESS as COMPANY's representative in this matter.

If you have any questions or concerns regarding the enclosed information, please contact NAME.

We are unable to issue a definitive letter ruling on the issue of whether your client's company would have nexus for Retailers' Occupation/Use Tax purposes. The Department has found that determinations of nexus in this area are so highly fact-dependent that the disclosure requirements of 2 Ill. Adm. Code 1200.110(b)(1) can rarely be satisfied within the context of a written narrative. Consequently, the best manner to determine nexus in this area is for a Department auditor to examine all relevant facts and information. The following discussion is based upon the assumption that COMPANY has nexus with Illinois.

COMPANY sells communication software to customers in Illinois. Based on the assumption that COMPANY has nexus with Illinois, COMPANY would be considered a "retailer maintaining a place of business in Illinois". The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

COMPANY also sells graphic arts services to customers in Illinois. At various times during its process, COMPANY transfers tangible personal property incident to its sale of service. For example, COMPANY produces reports detailing a feasibility study. Further, the final data file is placed on diskette, CD-ROM, film, or on electronic media. Although we assume that COMPANY does not engage in making sales of service in Illinois, its presence as a "serviceman maintaining a place of business in Illinois," together with its transfer to Illinois customers of tangible personal property incident to service, *may* create tax liability on the part of its customers. If its customers incur a Service Use Tax liability, COMPANY, assuming it has nexus, will be required to collect the Service Use Tax from its customers and remit it to the Department.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service in Illinois. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. Servicemen incur either Service Occupation Tax liability or Use Tax liability, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act. A service customer's liability, if any, hinges upon the manner in which the serviceman calculates his Service Occupation Tax liability. The manner in which COMPANY would have calculated its tax liability had the sale of service occurred in Illinois, will determine the liability of its service customer and what, if any, collection responsibilities COMPANY will incur.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may

the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Servicemen utilizing either of these methods must collect the corresponding Service Use Tax from service customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. These servicemen must also collect the corresponding Service Use Tax from their customers (in an amount equal to their Service Occupation Tax).

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules, or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis

ST 99-0025-PLR

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Associate Counsel

MAJ:msk

Enc.